

EXHIBIT D

8/5/2015

BMG Rights Management, et al. v. Cox Enterprises, Inc., et al.
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BMG RIGHTS MANAGEMENT (US) LLC, AND)
ROUND HILL MUSIC LP,)

PLAINTIFFS,) CASE NO.

) 1:14-CV-1611 (LOG/JFA)

vs.)

COX ENTERPRISES, INC., COX)
COMMUNICATIONS, INC., AND COXCOM,)
LLC,)

DEFENDANTS.)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF WILLIAM ROSENBLATT

TAKEN WEDNESDAY, AUGUST 5, 2015

SAN FRANCISCO, CALIFORNIA

Reported by Audra E. Cramer, CSR No. 9901

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1 statement, they have increased over time as have things
2 in general like the number of Cox subscribers.

3 BY MR. ALLAN:

4 Q. So the question is, with those two
5 understandings -- with that understanding in mind, when
6 you increase the number of steps in the graduated
7 response process, don't you also reduce the chances that
8 a particular subscriber will reach a particular level on
9 the graduated response process at any given time period?

10 MR. BRIDGES: Objection. Lacks foundation.
11 Calls for speculation. Assumes many facts not in
12 evidence. Calls for non-expert opinion. Beyond the
13 scope of the opinion.

14 THE WITNESS: I can think of cases where that
15 might not be true. It's not a hard-and-fast rule the
16 way this data might behave. You'd have to look at
17 actual data.

18 BY MR. ALLAN:

19 Q. And you did not do that in this case; correct?

20 MR. BRIDGES: All the same objections.

21 THE WITNESS: I did not provide -- I did not
22 attempt an analysis of the -- of the -- I need to find a

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1 word -- of the phenomena that you just described with
2 regard to the likelihood that a given subscriber who is
3 alleged to be infringing reached a certain level in the
4 graduated response process. I did not do that analysis.

5 BY MR. ALLAN:

6 Q. Are you familiar with the term
7 "black-listing" --

8 MR. BRIDGES: Objection.

9 BY MR. ALLAN:

10 Q. -- as used in this case by Cox?

11 MR. BRIDGES: Objection. Lacks foundation.

12 Vague and ambiguous. Can you show him an instance you
13 want him to refer to?

14 THE WITNESS: Yes. I've seen that term.

15 BY MR. ALLAN:

16 Q. What's your understanding of what it means?

17 MR. BRIDGES: All the same objections.

18 THE WITNESS: Black-listing refers to making a
19 determination that a complainant's copyright complaints
20 are not compliant with Cox's standards and therefore not
21 burdening the system with processing the complaints from
22 that complainant.

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1 BY MR. ALLAN:

2 Q. Is it your understanding that the plaintiff's
3 agent, in this case Rightscorp, has been black-listed by
4 Cox?

5 MR. BRIDGES: Objection. Vague and ambiguous.

6 THE WITNESS: Yes.

7 BY MR. ALLAN:

8 Q. And is it your understanding that the
9 decision -- well, strike that.
10 Are you -- strike that.

11 I don't see any opinion in your report in which
12 you offer an opinion on the reasonableness of the
13 decision to blacklist Rightscorp. I just want to make
14 sure that I understand that correctly.

15 MR. BRIDGES: Objection. The reports and
16 opinions speak for themselves. Lacks foundation. Vague
17 and ambiguous.

18 THE WITNESS: Well, let me think about that.
19 Did I offer an opinion on the reasonableness of the
20 decision to blacklist Rightscorp? Is that what you're
21 asking?

22

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1 BY MR. ALLAN:

2 Q. Yeah. Is that in any of your written opinions?

3 And I don't think it is, and I'd like you to confirm

4 that that's the case, that you are not offering such an

5 opinion.

6 MR. BRIDGES: And please review your opinions

7 in order to answer the question.

8 BY MR. ALLAN:

9 Q. I can refer you specifically to your reply,

10 paragraph 28.

11 MR. BRIDGES: If you're asking if it's anywhere

12 in his opinions, he has to read his opinions.

13 THE WITNESS: Well, the opinion that I did

14 express is that it would be an unreasonable burden to

15 have to process those complaints one at a time only to

16 have to individually -- only have to reject them one at

17 a time because they are judged -- they are determined to

18 be noncompliant. That's the opinion I expressed.

19 BY MR. ALLAN:

20 Q. That's a different opinion than opining on the

21 reasonableness of Cox's decision to blacklist Rightscorp

22 at the outset; correct?

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1 MR. BRIDGES: Objection. Misstates facts.

2 Misstates testimony. Argumentative. Lacks foundation.

3 Vague and ambiguous.

4 THE WITNESS: I would agree I did not opine on
5 the reasonableness of that particular decision.

6 BY MR. ALLAN:

7 Q. And you're not offering an opinion in this case
8 concerning the spirit of the DMCA; correct?

9 MR. BRIDGES: Objection to the extent it calls
10 for a legal conclusion and lacks foundation. Vague and
11 ambiguous.

12 THE WITNESS: Correct.

13 BY MR. ALLAN:

14 Q. In your review of the DMCA, did you see any
15 reference to its spirit?

16 MR. BRIDGES: Objection. Lacks foundation.
17 Vague and ambiguous. May call for a legal conclusion.

18 THE WITNESS: Well, I didn't see the word
19 "spirit" in the statute, and again I'm not offering
20 opinion about it.

21 BY MR. ALLAN:

22 Q. Is your opinion with respect to the

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1 reasonably of Cox's graduated response process
2 limited to how Cox handles infringement allegations that
3 have not been black listed?

4 MR. BRIDGES: Objection. Lacks foundation.
5 Assumes many facts not in evidence. Argumentative.
6 Confusing.

7 THE WITNESS: No. My opinion is that the
8 entire process is reasonable.

9 BY MR. ALLAN:

10 Q. Do you think it is reasonable for Cox not to
11 use notices from black listed complainants for purposes
12 of a graduated response?

13 MR. BRIDGES: Objection. Calls for matters
14 outside the scope. Lacks foundation. Vague and
15 ambiguous. Assumes many facts not in evidence.

16 THE WITNESS: I'm sorry. Repeat the question.
17 Just read it back, please.

18 MR. ALLAN: Could you just read it.

19 (Record read.)

20 THE WITNESS: Again, my opinion is that the
21 entire process, including determinations made that may
22 result in blacklisting of complainants, is reasonable.

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1 BY MR. ALLAN:

2 Q. Well, I'm a little confused now,

3 Mr. Rosenblatt. I thought you testified earlier that

4 you're not offering an opinion as to the reasonableness

5 of Cox's decision to black list Rightscorp. But then

6 you just testified your opinion is that the entire

7 process, including determinations made that may result

8 in blacklisting of companies, is reasonable.

9 A. Well, so --

10 MR. BRIDGES: What's the question? Wait for

11 him to ask you a question.

12 MR. ALLAN: They seem to be internally

13 inconsistent statements.

14 MR. BRIDGES: Wait for a question. I'm sorry.

15 What's the question?

16 BY MR. ALLAN:

17 Q. Are they --

18 MR. BRIDGES: Objection. Vague and ambiguous.

19 Lacks foundation.

20 BY MR. ALLAN:

21 Q. Are you testifying today as to the

22 reasonableness of Cox's determination to black list

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1 Rightscorp or any other complainant?

2 MR. BRIDGES: Objection. His opinions,
3 testimony and reports speak for themselves.

4 Argumentative. Lacks foundation.

5 THE WITNESS: I am not testifying -- I am not
6 offering opinion on the process by which a complainant
7 is determined to be issuing noncompliant complaints.
8 I'm not offering that opinion. I'm taking that as, it
9 is what it is.

10 BY MR. ALLAN:

11 Q. Are you assuming for purposes of your opinion
12 that Cox's decision to black list Rightscorp or any
13 other complainant for failing to comply with the spirit
14 of the DMCA is reasonable?

15 MR. BRIDGES: Objection. Argumentative. Lacks
16 foundation. Misstates evidence. Compound and assumes
17 many facts not in evidence.

18 THE WITNESS: I am assuming for purposes of my
19 opinion that Cox's decision to black list complainants
20 for failing to meet Cox's criteria for compliant
21 complaints is reasonable.

22

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1 BY MR. ALLAN:

2 Q. If it's determined in this case that Cox's
3 decision to black list Rightscorp or any other
4 complainant is not reasonable, does that affect the
5 outcome of your opinion?

6 MR. BRIDGES: Objection. Hypothetical.
7 Assumes many facts not in evidence. Lacks foundation.
8 Argumentative.

9 THE WITNESS: I don't know how to answer that,
10 honestly. I don't have an answer for that.

11 BY MR. ALLAN:

12 Q. Why not?

13 MR. BRIDGES: Objection. Hypothetical.
14 Assumes many facts not in evidence. Lacks foundation
15 and argumentative.

16 THE WITNESS: Because it depends on in what way
17 the -- what are you calling that? Reasonable...

18 BY MR. ALLAN:

19 Q. Let me ask it a different way. Okay? I'm
20 trying to understand the scope of your opinion.

21 A. Uh-huh.

22 Q. You're not opining on the reasonableness of

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1 Cox's decision to black list Rightscorp. You are
2 assuming that it's reasonable; correct?

3 A. Yes.

4 MR. BRIDGES: The opinions and reports speak
5 for themselves.

6 BY MR. ALLAN:

7 Q. If that assumption is incorrect and it's found
8 in this case that Cox's decision to blacklist Rightscorp
9 was not reasonable, how, if at all, does that affect
10 your opinion that Cox's graduated response process
11 overall is reasonable?

12 MR. BRIDGES: Objection. Hypothetical.
13 Assumes many facts not in evidence. Lacks foundation
14 and argumentative.

15 THE WITNESS: I'd have to think about it. I
16 can't give an opinion sitting here today.

17 BY MR. ALLAN:

18 Q. Would the number of Rightscorp notices that are
19 sent to Cox have any impact on that calculation for you?

20 MR. BRIDGES: Objection. Hypothetical.
21 Assumes many facts not in evidence. Lacks foundation.
22 Argumentative.

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1 THE WITNESS: The number of notices that any
2 complainant sends is -- is independent of a
3 determination by Cox about the reasonableness -- or
4 sorry, the compliance of those complaints. So the
5 answer is no, it would not change my opinion. The
6 number of complaints would have nothing to do with that
7 opinion.

8 BY MR. ALLAN:

9 Q. So it wouldn't -- so under my hypothetical, if
10 it's found that Cox's decision to blacklist Rightscorp
11 was not reasonable, it wouldn't matter to you whether
12 Rightscorp sent Cox 10 notices a month or 500,000
13 notices a month?

14 MR. BRIDGES: Objection. Hypothetical.
15 Assumes many facts not in evidence. Lacks foundation.
16 Argumentative.

17 THE WITNESS: Well, I'll tell you one way in
18 which it would matter, which is that Cox has a mechanism
19 for automating complaint processing if certain criteria
20 are met, one of which is that the volume of complaints
21 is sufficient to merit automation of those -- of the
22 processing of those complaints as a way of increasing

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1 the efficiency of processing those complaints. So that
2 is one way in which my opinion might be affected by the
3 number of complaints that a given complainant sends to
4 Cox.

5 BY MR. ALLAN:

let me put it



6 Q. Are you aware of any facts other than the fact
7 that Rightscorp's infringement notices can contain a
8 settlement offer that would prevent Cox from automating
9 the collection and processing of Rightscorp's notices?

10 MR. BRIDGES: Objection. I think it's outside
11 the scope of his opinions. It assumes many facts not in
12 evidence. Lacks foundation. Argumentative.

13 THE WITNESS: Well, ~~let me it~~ this way. I have
14 not seen or heard any evidence that there were any other
15 determining factors in making the determination that
16 Rightscorp's complaints were not compliant. That's the
17 only factor that I've seen evidence about.

18 MR. BRIDGES: It's almost 1:45, Mr. Allan, so
19 if you can...

20 MR. ALLAN: One more question.

21 MR. BRIDGES: All right.

22

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1 unsecured WiFi, such as bandwidth usage, open proxy.

2 There are a number of abuses that could be the result of
3 unsecured WiFi activity unbeknownst to the account
4 holder.

5 BY MR. ALLAN:

6 Q. Do you know whether when Cox installs high
7 speed Internet at a new subscriber's house they -- their
8 default procedure is to secure the wireless connection?

9 MR. BRIDGES: Objection. Lacks foundation.
10 Assumes many facts not in evidence. Competence. May
11 call for speculation.

12 THE WITNESS: Okay. So you asked me if -- let
13 me just review the question on the real-time.

14 Their default procedure is to secure the
15 wireless connection. So that would be an installer
16 working with individual account holders in onboarding
17 their accounts, and I have no knowledge of what takes
18 place among individual installers and account holders.
19 I do understand that account holders are given a welcome
20 package which includes policies and technical
21 information.

22

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1 BY MR. ALLAN:

2 Q. In your report, Mr. Rosenblatt, you compare
3 Cox's graduated response process to that of the
4 Copyright Alert System; is that right?

5 A. Yes.

6 Q. And do you know whether -- strike that.

7 Why do you believe that a comparison between
8 Cox's graduated response process and the Copyright Alert
9 System is an appropriate comparison for purposes of
10 rendering your opinion in this case?

11 A. Two reasons. Two primary reasons. The first
12 reason is -- and let me make sure I state it correctly.
13 Well, okay. Three reasons. One reason is that this --
14 the Copyright Alert System represents an agreed-upon set
15 of best practices for addressing allegations of
16 copyright infringement on ISPs that was agreed upon --
17 that was agreed to by several of the major US ISPs,
18 which are as we discussed this morning in what I
19 consider to be a Cox peer group, Cox's peer group as an
20 ISP and major as well independent holders of copyright
21 rights, and so therefore it represents a set of best
22 practices that the major stakeholders regarding online

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1 copyright infringement allegations have agreed. So

2 that's reason No. 1.

3 Reason No. 2 is, the level of detail that the

4 Copyright Alert System Memo of Understanding goes into,

5 plus that of the information that each of the

6 participating ISPs has published about it, enables us to

7 gain enough detail about how the process works to be

8 able to legitimately compare it to Cox's graduated

9 response process.

10 And No. 3 is -- well, okay. I already pretty

11 much said No. 3. No. 3 is that the ISPs involved are

12 peers of Cox in terms of being major ISPs in the

13 United States.

14 That's the -- those are the reasons why I chose

15 to compare Cox's graduated response process with that of

16 the Copyright Alert System.

17 Q. So in terms of reason No. 2, I just want to

18 make sure I understand this. Your opinion is that as

19 between the MOU and the various published policies of

20 the various participating ISPs, there's enough detail in

21 that process to be able to legitimately compare to Cox's

22 graduated response process?

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1 MR. BRIDGES: Objection. His testimony speaks
2 for itself, and his opinion and reports -- his opinions
3 and reports speak for themselves.

4 THE WITNESS: Let me add to that answer,
5 actually. Let me amend that No. 2. The additional
6 source of information that enables me to be confident in
7 the level of detail required to be able to make a
8 legitimate comparison is the independent analysis of the
9 Copyright Alert System that was done by Stroz Friedberg
10 sometime in -- I forget exactly when. I could find it
11 in my report. But there was an independent analysis
12 done, which to someone such as myself who is familiar
13 with alleged infringement-monitoring techniques, the
14 level of detail is such that I could make use of that
15 report and compare it to what Cox does.

16 BY MR. ALLAN:

17 Q. What is your experience with alleged
18 infringement-monitoring techniques?

19 A. I have worked with various companies that
20 produce technology that's relevant in that arena.

21 Q. Which companies?

22 A. Okay. So Zeitera is one. It's a

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1 fingerprinting company that's spelled Z-e-i-t-e-r-a.
2 Attributor is another company in that space. There's
3 one more. Digimarc, Irdeto, NDS, now known as Cisco
4 since Cisco acquired them.

5 Q. What specifically have you done with respect to
6 each of these companies as concerns
7 infringement-monitoring techniques?

8 MR. BRIDGES: Objection. Compound.

9 THE WITNESS: Well, first of all, I should
10 caveat this whole discussion by saying that that
11 knowledge was more informing of my analysis of
12 Rightscorp's system than of the comparison of the
13 Copyright Alert System to Cox's graduated response
14 process, but I will answer your question. So let's take
15 it one by one.

16 I mentioned Zeitera. Zeitera was a video
17 fingerprinting technology company that was trying to
18 build basically a hardware device that would do video
19 fingerprinting as part of deep packet inspection that a
20 service provider might use. And my work with them was
21 basically market strategy.

22 Who else did I mention?

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1 Q. Contributor.

2 A. Okay. Contributor is now part of Digimarc, and
3 they have a system for crawling the Internet and looking
4 for instances of alleged infringement based on
5 fingerprinting. And once again my role with respect to
6 that company was -- well, market strategy and also
7 advising them on new product development. Digimarc, who
8 I consulted to separately from their acquisition and
9 previous to their acquisition of Contributor, that was
10 slightly different in the sense that Digimarc was at the
11 time a watermarking company as opposed to
12 fingerprinting. It's a different set of techniques, and
13 I worked with them on a project having to do with the
14 use of standard identifiers for music content for
15 copyright management purposes.

16 Do you want me to go on?

17 Q. Please.

18 A. Digimarc has a "c" on the end, but we can fix
19 that later. "Contributor," but we can fix that later.
20 Irdeto is a company that does content protection,
21 copyright monitoring and enforcement. They do a bunch
22 of things in that space. I've done a number of things

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1 with Irdeto. I wrote a couple white papers for them.
2 Also they acquired a company called Bay TSP, B-a-y,
3 T-S-P, which you could say has a similar model to that
4 of Rightscorp. And I was involved in -- they were
5 looking to find a buyer, and I was involved in trying to
6 help them find a buyer. Irdeto eventually bought them.
7 I'm trying to remember which other companies I
8 mentioned.

I did

9 Cisco NDS. So NDS was originally a division of
10 News Corp., which had pay television content protection
11 technology as well as techniques for monitoring
12 copyright infringement online, and ~~did I~~ market strategy
13 work for them as well before they were acquired by
14 Cisco.

15 MR. ALLAN: Okay. Thank you. I'm going to go
16 back to the Copyright Alert System. Okay?

17 THE WITNESS: Okay.

18 MR. ALLAN: I'm going to hand you what I
19 believe is the MOU and ask you to confirm that for me.

20 MR. BRIDGES: I'm sorry. Are we marking this
21 as an exhibit?

22 MR. ALLAN: It is.

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1 MR. BRIDGES: This is Exhibit 13?

2 MR. ALLAN: Yes.

3 MR. BRIDGES: WR 13.

4 (Whereupon, WR 13 was marked for
5 identification.)

6 THE WITNESS: Yes, I confirm that that's the
7 CAS MOU.

8 BY MR. ALLAN:

9 Q. And you are familiar with this document, are
10 you not, Mr. Rosenblatt?

11 A. Yes, with particular familiarity to certain
12 parts of it.

13 Q. I think you testified earlier that your
14 understanding is that this is an agreed-upon set of best
15 practices for addressing allegations of copyright
16 infringement; is that right?

17 MR. BRIDGES: Are you asking if those are the
18 words he used?

19 THE WITNESS: I don't remember if those are my
20 exact words, but I'll agree that that was the substance
21 of my testimony.

22

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1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS.
3

4 I, AUDRA E. CRAMER, C.S.R. No. 9901, in and for
the State of California, do hereby certify:

5 That, prior to being examined, the witness named
in the foregoing deposition was by me duly sworn to
6 testify the truth, the whole truth and nothing but the
7 truth;

That said deposition was taken down by me in
8 shorthand at the time and place therein named, and
9 thereafter reduced to typewriting under my direction,
and the same is a true, correct and complete transcript
10 of said proceedings;

11 I further certify that I am not interested in the
12 event of the action.

13 Witness my hand this 8th day of August 2015.
14
15
16

17 
18

19 Certified Shorthand
20 Reporter for the
21 State of California
22